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NOTES

Criminal Sanctions for the "Status" of Narcotics Addiction

Defendant was convicted in California¹ of violating a statute² which made addiction to the use of narcotics a criminal offense. Punishment for conviction under the statute was confinement for not less than ninety days nor more than one year. *Held*: A state statute which makes the "status" of narcotics addiction a crime violates the due process clause of the fourteenth amendment³ of the United States Constitution, since the fourteenth amendment incorporates the prohibition of the eighth amendment⁴ against cruel and unusual punishments. *Robinson v. California*, 370 U.S. 660 (1962).

I. "STATUS" AS A CRIME

Courts and legal writers do not agree upon the definition of a crime. Definitions that have been advanced can be summarized as follows: (1) an act committed or omitted in violation of a public law either forbidding or commanding it;⁵ (2) any wrong which the government deems injurious to the public and punishes through a judicial proceeding in its own name;⁶ (3) an act or omission punishable as an offense against the state;⁷ and (4) any social harm defined and made punishable by law.⁸ Underlying all of these definitions is the theory that a logical relationship must exist between a certain

¹ Defendant was convicted in the Municipal Court of Los Angeles. The conviction was affirmed in the Appellate Department of the Los Angeles County Superior Court, the highest court of the state in which a decision could be rendered on Defendant's appeal, thus allowing direct recourse to the United States Supreme Court. See 62 Stat. 929 (1948), 28 U.S.C. § 1257 (1958).

² Cal. Health & Safety Code § 11721 provides:

No person shall use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the state to prescribe and administer narcotics. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. . . . In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail.

³ U.S. Const. amend. XIV, § 1: "nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

⁴ U.S. Const. amend. VIII: "excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted."

⁵ 4 Blackstone, Commentaries 5.

⁶ 1 Bishop, New Criminal Law § 32 (8th ed. 1892).

⁷ Mays, Crimes § 1 (rev. ed. 1938).

⁸ Perkins, Criminal Law § 1(c) (1957).

type of behavior and the specific harm sought to be prevented; only then will the law apply sanctions to condemn the particular behavior.⁹ This theory may best be characterized in terms of conduct and causation. The concept of conduct is employed to identify the source of harm.¹⁰ In order for the given behavior to be classified as criminal conduct, there must be a concurrence of *mens rea*,¹¹ the awareness of wrongfulness or unlawfulness, and *actus reus*,¹² the physical manifestation of the mental processes. The concept of causation is defined as a rule of inevitability, *i.e.*, that the particular conduct bears a logical causal relationship to the undesirable harm.¹³

Application of criminal sanctions to the "status" of addiction to narcotics presents two departures from the traditional conduct-causation theory of criminal law. The first of these is that "status" does not meet the requirement of conduct since there is no physical manifestation or *actus reus*. Secondly, the "status" criminality replaces actual causation with "suspicion causation."

A. Status Vs. Conduct

The concept of "status" criminality or the application of criminal sanctions to a "status" is confined primarily to vagrancy statutes. Although the statutory definition of a vagrant varies from state to state, the offense is largely a catch-all grouping which ranges from a healthy beggar¹⁴ or a common prostitute¹⁵ to the dope addict.¹⁶ The common feature of the thirty different types of vagrancy statutes that have been enacted by the states¹⁷ is that it is not the act of prostitution, begging, nor the use of narcotics that is punished; rather, the laws punish a state of being, a condition, or a present "status."¹⁸ Justice Holmes described confinement for vagrancy as punishment "for being a certain kind of person, not [for] doing a certain overt act. . . . It follows that the *conduct* proved is *not* the offense, but only grounds for inference that he is that kind of

⁹ Hall, *General Principles of Criminal Law* 253 (2d ed. 1960).

¹⁰ *Id.* at 177.

¹¹ "*Mens rea* is the fusion of the elementary functions of intelligence and volition." *Id.* at 70.

¹² "*Actus reus* . . . can never be a crime apart from the requisite *mens rea*; more precisely, *actus reus* implies *mens rea*." *Id.* at 230.

¹³ *Id.* at 253.

¹⁴ Ala. Code tit. 14, § 437 (1958).

¹⁵ Tex. Pen. Code Ann. art. 607 (1952).

¹⁶ N.J. Rev. Stat. Ann. § 2A:170 (1953).

¹⁷ For a complete outline in chart form of the classifications of vagrants by states see 37 N.Y.U.L. Rev. 109-13 (1962).

¹⁸ *District of Columbia v. Hunt*, 163 F.2d 833 (D.C. App. 1947); *People v. Craig*, 152 Cal. 42, 47, 91 Pac. 997, 1000 (1907); *Titus v. State*, 97 Tex. Crim. 444, 261 S.W. 1029 (1924); *Cox v. State*, 84 Tex. Crim. 49, 205 S.W. 131 (1918); *Clark & Marshall, Crimes* § 4:00, at 181 (6th ed. 1958).

person."¹⁹ Although Professor Perkins agrees that the "status" or condition of vagrancy is the "gist of the offense," he maintains that the misconduct which brought about the "status" is necessary to the offense.²⁰

In support of the position that the "status" is condemned and not the conduct is the prevalent doctrine that once the condition is abandoned, prosecution is precluded.²¹ Under traditional criminal law, once the prohibited conduct has occurred, an offense is complete. However, a prostitute, beggar, or dope addict who has reformed is purged of his previous crime, since the law only punishes a present "status."²² Furthermore, since a person is just as guilty of being a common beggar or drug addict in the periods when he is not actually soliciting alms or using narcotics,²³ it is clear that the "status" of being a beggar or addict is the offense. "Status" criminality then does not conform to the traditional requirement of conduct, since there is no *actus reus*. Without this physical manifestation there are no means available to identify the source of the harm and the requisite intent; thus, it is impossible to direct a deterrent force at the origin of the harm.

B. Is There Causation In A "Status" Crime?

The existence of causation is seriously questioned in "status" criminality. Under traditional theory, once conduct has occurred there must be a high degree of inevitability that the predetermined undesirable harm will result.²⁴ However, it is questionable whether there is a logical relationship between the "status" of addiction and eventual social harm.²⁵ Furthermore, the value of utilizing criminal sanctions as a deterrent to narcotics traffic and addiction has been challenged,²⁶ for despite the rigid control and the harsh penalties called for in the United States' narcotics statutes, addiction here has not decreased.²⁷ As a result, alternative programs resembling the

¹⁹ Commonwealth v. O'Brien, 179 Mass. 533, 61 N.E. 213, 214 (1901).

²⁰ Perkins, *The Vagrancy Concept*, 9 Hastings L.J. 237, 259 (1958).

²¹ Titus v. State, 97 Tex. Crim. 444, 261 S.W. 1029 (1924): "Vagrancy is a present condition or status, and the imposition upon society consists of the fact that she is now a vagrant and not that she was heretofore a vagrant." See also People v. Banwer, 22 N.Y.S.2d 566 (Magis. Ct. 1940); Levy v. State, 84 Tex. Crim. 493, 208 S.W. 667 (1919).

²² *Ibid.*

²³ People v. Babb, 103 Cal. App. 2d 326, 328, 229 P.2d 843, 845 (Dist. Ct. App. 1951).

²⁴ Hall, *op. cit. supra* note 9.

²⁵ Finestone, *Narcotics and Criminality*, 22 Law & Contemp. Prob. 69 (1957); Kobb, *Drug Addiction and Its Relation to Crime*, Mental Hygiene, Jan. 1925, pp. 74-84; *The Narcotics Dilemma: Crime or Disease?* Sat. Eve. Post, Sept. 8, 1962, p. 64.

²⁶ King, *Narcotic Drug Laws and Enforcement Policies*, 22 Law & Contemp. Prob. 113 (1957).

²⁷ See authorities cited note 25 *supra*.

British system of free or low cost drugs have been proposed.²⁸ The general disagreement over the United States' system of controls²⁹ and over the relationship between addiction and anti-social behavior casts doubt upon the high degree of inevitability necessary for causation. The fact that there is lack of uniformity indicates that the degree of inevitability is neither constant nor high. Thus, the effect of this assumption of causation in the face of substantial disagreement is that *suspicion* causation is being substituted for *actual* causation in the area of "status" crimes in general and narcotics addiction in particular.³⁰

C. Attacks On "Status" Criminality

Attacks on "status" criminality statutes have been based on the following grounds: (1) such statutes are unconstitutionally vague and thus a denial of due process;³¹ (2) they are an unconstitutional exercise of the police power;³² and (3) they impose an unreasonable restraint upon personal liberty and thereby deny due process of law.³³ However, some courts have upheld criminal sanctions upon a "status" as being within the police power of a state, evidently assuming a casual relationship between the prohibited "status" and the eventual social harm.³⁴ Other decisions recognize the power of the legislature to declare a "status" a crime but reserve to the courts the power to determine whether or not there is a reasonable relationship between the alleged offense and the objectives sought.³⁵ These attacks on "status" criminality and the corresponding justifications indicate that the problem facing the courts is one of balancing individual liberty with the competing demands of crime prevention.

It is significant that the modern trend is away from "status" criminality. The Model Penal Code has rejected such a criminal

²⁸ Howe, *An Alternative Solution to the Narcotics Problem*, 22 Law & Contemp. Prob. 132 (1957).

²⁹ See Cantor, *The Criminal Law and Narcotics Problem*, 51 J. Crim. L., C. & P.S. 512 (1961).

³⁰ Douglas, *Vagrancy and Arrest on Suspicion*, 70 Yale L.J. 1, 11 (1960).

³¹ A statute making it a crime to be a gangster is unconstitutional because the statute "condemns no act or omission; the terms it employs to indicate what it purports to denounce are so vague, indefinite, and uncertain that it must be condemned as repugnant to the due process clause of the fourteenth amendment." *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

³² However, the courts have generally held that it is a legitimate exercise of the police power of the state to make a given "status" a crime. *L'Hote v. New Orleans*, 177 U.S. 587, 596 (1900); *Levine v. State*, 110 N.J.L. 467, 470-71, 166 Atl. 300, 302 (Ct. Err. & App. 1933).

³³ *Territory of Hawaii v. Anduha*, 48 F.2d 171 (9th Cir. 1931); *Ex parte Smith*, 135 Mo. 223, 226-27, 36 S.W. 628, 629 (1896).

³⁴ "To challenge the power of the state to prevent the commission of . . . crimes by legislation of this character, is to challenge the power to denounce and punish the crime itself." *Levine v. State*, 110 N.J.L. 467, 470-77, 166 Atl. 300, 302 (Ct. Err. & App. 1933).

³⁵ *People v. Belcastro*, 356 Ill. 144, 190 N.E. 301 (1934).

classification, with the exception of a "suspicious loitering" section which requires the loitering to justify suspicion of criminal activity.³⁶ Similarly, the Uniform Narcotic Drug Act, which has been adopted with some variations by forty-six states,³⁷ does not make the "status" of addiction an offense.³⁸ However, California,³⁹ Colorado,⁴⁰ Louisiana,⁴¹ New Jersey,⁴² Texas,⁴³ Utah,⁴⁴ and Washington⁴⁵ have criminal sanctions against the "status" of addiction either in separate statutes or within the local vagrancy statute.

D. *The Robinson Case*

The majority in the principal case recognized that addiction was a "status" but did not discuss the conduct-causation concepts of criminal theory. Rather, the Court held that the imposition of criminal sanctions upon a "status" was cruel and unusual punishment. Justice White dissented on the ground that the state had the power to apply criminal sanctions for the use or regular use of narcotics.⁴⁶ Justice Harlan seemed to recognize the problem concerning "status" criminality and concurred on the ground that under the instructions given to the jury, the defendant could have been punished for a *bare desire* to commit a criminal *act*. His opinion recognized that there must be conduct evidenced by the *actus reus* in order to identify the source of harm.⁴⁷

The "void for vagueness" doctrine⁴⁸ was not discussed by any of the justices despite the rule that a penal statute must contain clear and precise language to serve as a guide for future conduct and to provide the courts with effective standards in determining violations.⁴⁹ In an earlier prosecution of another "status" crime, the

³⁶ Model Penal Code § 250.6 (Proposed Official Draft, May 4, 1962); see also Model Penal Code § 250.12, comment (Tent. Draft No. 13, 1961).

³⁷ For a list of adopting states, see Uniform Narcotic Drug Act, 9b Unif. Laws Ann. 274.

³⁸ Uniform Narcotic Drug Act § 2 states that "it shall be unlawful for any reason to manufacture, possess, dispense, or compound any narcotic drug, except as authorized in this act."

³⁹ Cal. Health & Safety Code § 11721, as amended, (Supp. 1959).

⁴⁰ Colo. Rev. Stat. Ann. § 48-6-20(6) (Supp. 1961).

⁴¹ La. Rev. Stat. § 40:981 (1950), as amended, (Supp. 1961).

⁴² N.J. Rev. Stat. Ann. § 2A:170 (1953).

⁴³ Tex. Pen. Code Ann. art. 725(c)(2) (1953) states that "it shall be unlawful for any person to habitually use narcotic drugs, be addicted to the use of narcotic drugs, or be under the influence of narcotic drugs . . ."

⁴⁴ Utah Code Ann. §§ 76-19-10, -61-1(12) (1953).

⁴⁵ Wash. Rev. Code Ann. § 9.87.010(12) (1951).

⁴⁶ 370 U.S. at 688.

⁴⁷ *Id.* at 678.

⁴⁸ See quotation note 31 *supra*; see also Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 Cornell L.Q. 195 (1955).

⁴⁹ Scott, *Constitutional Limitations on Substantive Criminal Law*, 29 Rocky Mt. L. Rev. 275, 288 (1957); see also 62 Harv. L. Rev. 77 (1948).

Supreme Court held in *Lanzetta v. New Jersey*⁵⁰ that a sanction against being a "gangster" was unconstitutionally vague.⁵¹ The rationale of the *Lanzetta* case could have been applied in the principal case; the definition of an addict was inherently vague, since there was no *actus reus* to establish clear limits to the definition. The fact that the California statutes contained two stages of addiction, with civil sanctions for one and criminal for the other,⁵² added to the vagueness. Thus, a person in California could have been in three positions: (1) a non-addict; (2) an addict with volition subject to criminal punishment; or (3) an addict without volition subject to civil confinement. The duty of the California courts was to determine at what point, after the first use of narcotics, the individual moved from the twilight zone between being a non-addict and a volitional addict. Similarly, there was a second vague zone between being a volitional addict and a non-volitional addict. If there were no other basis for the decision, the ambiguity in the California statutes combined with the inherent vagueness of the term "addict" appear repugnant to the due process clause of the fourteenth amendment for vagueness and uncertainty of application.

II. THE EIGHTH AMENDMENT AND ITS APPLICATION TO THE STATES THROUGH THE FOURTEENTH AMENDMENT

The prohibition against the power of government to punish excessively for a criminal offense had its origin in the laws of Edward the Confessor⁵³ in 1042 and the Magna Carta.⁵⁴ This prohibition was later incorporated into the English Declaration of Rights in 1688.⁵⁵ Even before it was adopted in that 1688 Declaration, the Massachusetts Body of Liberties,⁵⁶ of 1641, and the Laws and Liberties,⁵⁷ of 1648, contained prohibitions against cruel punishment. Presently, the eighth amendment to the United States Constitution,⁵⁸ the common law of almost all the states,⁵⁹ and a majority of the state con-

⁵⁰ 306 U.S. 451 (1939).

⁵¹ See quotation note 31 *supra*.

⁵² Cal. Health & Safety Code § 11721; Cal. Welfare & Inst'n's Code §§ 5350-61.

⁵³ Barrington, Magna Charta No. 41, at 199 (2d ed. 1900).

⁵⁴ Magna Charta, ch. 20; see explanation in Barrington, *op. cit. supra* note 53, at 336.

⁵⁵ 1 W. & M., 2d Sess., c. 2.

⁵⁶ The Colonial Laws of Massachusetts 43 (Whitmore 1890), reprinted from the edition of 1672 as cited in 34 Minn. L. Rev. 134, 135 (1950).

⁵⁷ The Laws and Liberties of Massachusetts 46 (Farrand 1929), reprinted from the copy of the 1648 edition as cited in 34 Minn. L. Rev. 134, 135 (1950).

⁵⁸ See note 4 *supra* for a quotation of the relevant portions.

⁵⁹ Only Connecticut and Vermont do not have an express prohibition in some form prohibiting cruel punishment. However, Connecticut does provide against imposition of excessive fines. Conn. Const. art. I, § 13. The Vermont Supreme Court has held that the

stitutions⁶⁰ outlaw excessive punishments. Furthermore, the Universal Declaration of Human Rights passed and proclaimed by the United Nations prohibits "cruel, inhuman or degrading treatment or punishment."⁶¹

The first nine amendments to the United States Constitution apply to the federal government and do not limit the power of the states.⁶² However, the expanding concept of "due process of law" under the fourteenth amendment has opened the way for the application to "state action" of some of the prohibitions in the first nine amendments.⁶³ In *Palko v. Connecticut*,⁶⁴ the Court stated that in order to violate the due process clause, the state action must transgress a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."⁶⁵

Prior to the instant case, the Supreme Court had resisted inclusion of the prohibition of the eighth amendment within the concept of due process.⁶⁶ In an early case the Supreme Court held that it did not apply, but three justices dissented.⁶⁷ In 1947 in *Louisiana ex rel. Francis v. Resweber*,⁶⁸ the Court held that even if the proscription of the eighth amendment applied to the states, the punishment involved in that case was neither cruel nor unusual. Four dissenting justices stated that the prohibition applied to the states.⁶⁹ In the last case involving the question, the Court avoided a determination by reversing on other grounds a Third Circuit opinion which held that the prohibition of the eighth amendment was encompassed by the fourteenth.⁷⁰

The principal case marks the first judicial determination by the United States Supreme Court that the proscription contained in the eighth amendment is incorporated within the due process clause of

common law in existence when the state was established is applicable and especially referred to the English Declaration of Rights. *State v. O'Brien*, 106 Vt. 97, 170 Atl. 98 (1934).

⁶⁰ Thirty-six states have provisions of this type. See, e.g., Cal. Const. art. I, § 6; Tex. Const. art. I, § 13.

⁶¹ 6 U.N. Bull. 7 (1949).

⁶² *Pervear v. Massachusetts*, 72 U.S. (5 Wall) 475 (1867); *Ex parte Garrison*, 297 Fed. 509 (S.D. Cal. 1924); *People v. Elliot*, 272 Ill. 592, 112 N.E. 300 (1916).

⁶³ *Sutherland, Due Process and Cruel Punishment*, 64 Harv. L. Rev. 271 (1950); see also 34 Minn. L. Rev. 134 (1950); 1960 Wash. U.L.Q. 160.

⁶⁴ 302 U.S. 319, 325 (1937).

⁶⁵ See also *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *Herbert v. Louisiana*, 272 U.S. 312, 316 (1926); 22 Minn. L. Rev. 550 (1938).

⁶⁶ *Wolf v. Colorado*, 338 U.S. 25 (1948); *Adamson v. California*, 332 U.S. 46 (1947); 96 U. Pa. L. Rev. 272 (1948).

⁶⁷ *O'Neil v. Vermont*, 144 U.S. 323, 360, 370 (1892).

⁶⁸ 329 U.S. 459 (1947).

⁶⁹ *Id.* at 472.

⁷⁰ The Supreme Court in a per curiam opinion reversed because of a flaw in the procedure. *Johnson v. Dye*, 338 U.S. 864 (1949).

the fourteenth amendment. The Court was correct in so holding. The ancient origin and the inclusion of the prohibition in the English Declaration of Rights, the early American colonial laws, the state constitutions, the United States Constitution, and the United Nations Universal Declaration of Human Rights indicate its fundamental, deep-rooted nature.

III. "STATUS" CRIMINALITY AS A VIOLATION OF THE EIGHTH AMENDMENT

The proscription against cruel and unusual punishments has seldom been in issue in courts of the United States, because it was designed to prohibit the use of physical torture which marked earlier common law offenses.⁷¹ The consistent view has been that cruel and unusual punishment refers to such acts as drawing and quartering, burning alive, starvation, mutilation, and other inhuman, barbarous, or torturous treatment.⁷² Therefore, many courts have held that the prohibition applies only to the form of punishment rather than to the quantity or duration.⁷³ However, the federal courts and some state courts have found that the eighth amendment prohibits the quantum or duration of punishment as well and have held that a punishment must be graduated and proportional to the offense committed.⁷⁴ Always, however, the prohibition has been applied against the punishment and not the offense.

Courts have been reluctant to overrule legislative sanctions, and the language contained in the opinions indicates this hesitancy. The common standards used to determine when a statute is unconstitutional for inflicting cruel and unusual punishment are: (1) "clearly cruel and unusual";⁷⁵ (2) "unmistakably and conclusively appears that it carries a punishment shockingly disproportioned to the offense";⁷⁶ (3) "shocking to the sense of justice";⁷⁷ (4) "shocks the moral sense of all reasonable men";⁷⁸ and (5) contrary to funda-

⁷¹ The word "cruel" as used in the Constitution was intended to prohibit torture (agonizing punishment) but was never intended to abridge the selection of the law-making power of such kind of punishment as was deemed most effective in the suppression of crime. *Wilkerson v. Utah*, 99 U.S. 130 (1879).

⁷² *Wilkerson v. Utah*, 99 U.S. 130 (1879); 1960 Wash. U.L.Q. 160.

⁷³ "The cruelty against which the Constitution protects a convicted man is . . . in the method of punishment, and not the necessary suffering involved in any method employed to extinguish life humanely." *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 464 (1947) (Emphasis added.); see also *Kistler v. State*, 190 Ind. 149, 129 N.E. 625 (1921).

⁷⁴ *Weems v. United States*, 217 U.S. 349 (1910); *Hemans v. United States*, 163 F.2d 228 (6th Cir. 1947); *Sustar v. County Court*, 101 Ore. 657, 201 Pac. 445 (1921).

⁷⁵ *Moore v. Aderhold*, 108 F.2d 729, 732 (10th Cir. 1939).

⁷⁶ *Kistler v. State*, 190 Ind. 149, 158, 129 N.E. 625, 628 (1921).

⁷⁷ *Kasper v. Brittain*, 245 F.2d 92, 96 (6th Cir. 1957).

⁷⁸ *Weber v. Commonwealth*, 303 Ky. 56, 64, 196 S.W.2d 465, 469 (1946).

mental principles of justice as determined by the standards or mores of society.⁷⁹ Thus, it is evident that the courts consider the legislative power in this area to be nearly absolute except in extreme circumstances.

In the principal case the punishment for being an addict was confinement for "not less than 90 days nor more than one year in the county jail."⁸⁰ Would the imposition of such a *punishment* be contrary to the fundamental principles of justice as determined by the standards or mores of society?

If the accused had been validly convicted, then the Court could have applied the eighth amendment to determine if the *punishment* was cruel and unusual in the method, quantity, or duration. Unfortunately, however, the Court did not at any point make the statement that the *punishment* violated those principles. Instead, it qualified its language by saying that any law which makes an "illness" or "status" a criminal offense is cruel and unusual.⁸¹ In fact, the Court said, for such offenses "even one day in prison would be a cruel and unusual punishment. . . ."⁸² If this statement is taken literally, then any confinement for status crimes may contravene the eighth amendment. Thus, by abandoning the past precedents and traditional tests, the Court may have opened the door for numerous appeals on grounds of cruel and unusual punishment.

The punishment provided in the California statute did not appear to be cruel and unusual by previous tests. The statute in question did not punish the non-volitional addict who had lost his self-control.⁸³ This type of addict was to be confined for hospital treatment under the provisions of a civil statute.⁸⁴ The principal case concerned the addict who still had the power of self-control.⁸⁵ In this stage of addiction, withdrawal symptoms are not pronounced. Also, there is no agreement that hospital treatment would be any better than criminal punishment. In fact, the California Health and Safety Code provides that the addict may receive treatment while in the county jail.⁸⁶ This provision was mentioned in the dissent by Justice Clark, who thought that, properly construed, the statute provided a treatment rather than a punishment.⁸⁷ In any event, the punishment of

⁷⁹ See 21 Tul. L. Rev. 480, 485 (1947).

⁸⁰ Cal. Health & Safety Code § 11721, as amended, (Supp. 1959).

⁸¹ 370 U.S. at 666.

⁸² *Id.* at 667.

⁸³ Cal. Health & Safety Code § 11721.

⁸⁴ Cal. Welfare & Inst'ns Code §§ 5350-61.

⁸⁵ See text following note 52 *supra*.

⁸⁶ Cal. Health & Safety Code § 11391(b).

⁸⁷ 370 U.S. at 682.